



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

November 9, 2017

VIA ELECTRONIC MAIL

Cindy Marten
Superintendent
San Diego Unified School District
4100 Normal Street, Room 2219
San Diego, CA 92103

(In reply, please refer to case no. 09-17-1325.)

Dear Superintendent Marten:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Diego Unified School District (District). The Complainant alleged that the District discriminated against her daughter (Student) on the basis of disability.¹ Specifically, OCR investigated whether the Student was denied a free appropriate public education (FAPE) when she was not provided extended test time as required by her Section 504 plan in a class offered at a District school by a local Community College (College).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the regulations.

To investigate this complaint, OCR interviewed the Student, the Complainant, and staff of both the District and the College. OCR also reviewed documents and other information provided by Complainant, the District, and the College. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and OCR's findings in this case.

¹ In a previous letter, OCR informed the District of the identities of the Complainant and the Student and in the interest of privacy will not do so here.

Legal Standards

The Section 504 regulations, at 34 C.F.R., section 104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Findings of Fact

In the fall of the 2016-2017 school year, the Student was enrolled as an 11th grader at a high school within the District (School). She is eligible for accommodations under Section 504 due to diagnoses of dyslexia and an auditory processing disorder. A Section 504 plan dated November XX, 2015, provided for multiple accommodations, including preferential seating, extended time for completing exams and homework, and use of a calculator as needed for exams.

In September 2016, the Student enrolled in XXXX XXX, a college-level advanced XXXX course offered at the School through a partnership with the local community college District (College District). XXXX XXX is taught on the premises of the School by an instructor from the College.

Students are required to pass a placement test before being permitted to enroll in XXXX XXX. The placement test is administered by the School's Advanced Placement (AP) XXXXXXXXXX teacher. XXXX XXX is listed on the School's website as a XXXXXXXXXX course offering. Enrollment for the class is completed through the College's website, with assistance, as needed, by School counselors.

According to the District, a student who completes XXXX XXX with a grade of "C" or better receives double credit on their high school transcript for a passing grade, meaning a 5.0 credit class at the College would convert to 10.0 credits on the student's high school transcript. Students would also receive credit at the College for completion of the course with a passing grade.

The District requires that concurrent enrollment students and their parents complete paperwork prior to enrollment. One of the required forms lists criteria for concurrent enrollment. Item one states: "[s]chool counselor and/or site principal/administrator has reviewed the student's transcript with student and parent/guardian to ensure appropriate pre-requisite coursework has been satisfactorily met so that the student is prepared to be successful in a college-level course." Item eleven states "[t]he minor student is mature enough to participate in college/university courses [sic] take primary

responsibility for his/her own safety and conduct. Colleges/universities are open campuses and are adult learning environments. Curriculum and college processes will not be changed to accommodate high school students. Student must act on their own behalf.” Included in the forms is a section titled “Access to Student Records”. By signing this section, the Student authorized the District access to all of her academic records which were maintained by the College. The Complainant and the Student both signed the forms on August XX, 2016.

The standard paperwork given to concurrent enrollment students and provided for OCR’s review does not include information specific to students with disabilities and does not explain how they should access accommodations/academic adjustments during their attendance in a community college class.

The College provided OCR with the Student’s DSPS records. Included is an Application for Services dated August X, 2016. According to the records, an intake appointment was scheduled for the Student on September X, 2016. Classes began the week of August XX, 2016.

On August XX, 2016, Complainant emailed the School Counselor asking whether the Student’s teachers had reviewed the Student’s Section 504 plan and informing him that the Student had a quiz in XXXX XXX the next day. The same day, the School Counselor responded that extended time for XXXX XXX had to be approved through the College.

On September X, 2016, the Student and Complainant met for the first time with a DSPS counselor. The Student signed consent for DSPS to share information with Complainant. Complainant and the Student provided the DSPS counselor a copy of the Student’s Section 504 plan.

The Student reported to OCR that the DSPS counselor was very supportive and provided suggestions for accommodations that might be helpful to the Student in the College setting. During the meeting, the DSPS counselor provided the Student with an accommodations letter authorizing several accommodations, including up to 2x extended test time in a distraction-reduced setting. This is the only accommodation at issue in this matter.

Complainant reported to OCR her recollection that the DSPS counselor said she would email a copy of the letter to the Instructor and that the Student should provide a copy to the Instructor as well. The DSPS counselor told OCR that, as is her practice, she told Complainant and the Student that the Student would need to provide a copy of the letter to the Instructor and one would be kept on file.

The Student reported to OCR that she received a copy of the syllabus on the first day of class. OCR reviewed a copy of the Instructor’s syllabus for Fall 2016. It states “[S]tudents with disabilities who may need accommodation please contact the instructor immediately.”

The Student told OCR that she wanted to speak with the Instructor alone to discuss her accommodations but that there were always other students present and she was reluctant to discuss her disability in the presence of others. She did not ask to meet with the Instructor alone during office hours or at some other mutually convenient time; however, she told OCR that she recalls giving the Instructor an envelope containing a copy of the Accommodations Letter at some point during the first weeks of class. The Instructor reported to OCR that the Student never spoke to her about her accommodations and that she never received a letter or an envelope from the Student.

Complainant told OCR that she wanted the Student and the Instructor to work out the accommodations issue, but that eventually she “had to step in.” Thus, on September XX, 2016, Complainant emailed the Student’s XXXX XXX Instructor stating that the Student had been trying to speak with the Instructor privately but had run out of time to do so. Complainant attached a copy of the Student’s DSPS Accommodation Letter and indicated the Student needed extended time to complete quizzes and tests. The Instructor responded that it was unfortunate that the Student did not make time to speak with the Instructor before that date as she was available daily and could have been able to help her. The Instructor stated that the Student was showing a lack of understanding of the material and recommended that she withdraw from the course.

On September XX, 2016, Complainant responded to the Instructor, with copy to the School Counselor, the Student, and the DSPS office, requesting further information regarding the Instructor’s assessment of the Student’s progress in the class and asking that the Instructor provide accommodations for a quiz/test that was scheduled for that day.

On Friday, September XX, 2016, the Instructor administered a quiz in XXXX XXX. The Student reported to OCR that she was provided extended time in the School’s counseling office to complete the quiz. It is undisputed that the Student did not receive accommodations in XXXX XXX until that day.

According to the Instructor, the quiz entailed three questions for which students could earn partial credit for showing work that demonstrated some understanding of the material. The Student’s quiz earned a score of zero. The Instructor’s impression was that the course was too fast-paced and too hard for the Student: quizzes were administered nearly daily and she believed the Student had difficulty keeping up. She recommended to Complainant that the Student drop the course.

The final day to drop the course without a negative mark on the Student’s transcript was Monday, September XX, 2016. The Student dropped the course on September XX, 2016.

In late fall 2016, the Student withdrew from the School and enrolled in an independent study program within the District. In OCR’s interview with the Student, she reported she

loved her new school and had made new friends though she missed her old friends from the School. She indicated she may wish to retake XXXX XXX at a future date.

Analysis & Conclusions of Law

Section 504, Title II and their implementing regulations require school districts to provide students with disabilities with educational programs and related aids and services that are designed to meet their needs as adequately as the needs of nondisabled students are met. In creating a plan to meet this obligation, districts must ensure that students' needs are thoroughly evaluated, and that a group of persons who are knowledgeable about the student and all of the evaluation data make an individualized determination as to the specific services, including academic accommodations, that the student requires. Once this determination is made, the district bears the burden of ensuring that the student receives the necessary accommodations and related aids and services in all areas of his/her educational program. A district that develops an IEP or Section 504 plan, but does not ensure that it is fully implemented, has not met its obligations to provide FAPE.

Based on a thorough review of the evidence, OCR concluded that the District failed to meet its obligations under Title II, Section 504 and their implementing regulations with respect to the issue at hand. The District was operating under a belief that because the class is a community college class, students with disabilities bear the responsibility to seek and obtain accommodations pursuant to the post-secondary requirements of Section 504 and Title II. This assumption may be appropriate in instances when students enroll in community college courses independent of the District. In this case, however, the facts establish that the course was offered, for all intents and purposes, as a high school class. OCR considered multiple factors in reaching this determination.

First, OCR considered that the class is listed on the School website as a XXXXXXXXXXXX course offering and that the course takes place at the School during the regular school day, and functions, for most students, as their high school XXXXXXXXXXXX class. To enroll in the class, students must take a placement exam that is administered by a District teacher and appropriateness of enrollment in the class is reviewed by School counselors. Additionally, students receive credit on their high school transcripts for a passing grade in the class. OCR concluded that due to the nature of the relationship between the College and the District with respect to this concurrent enrollment class, the District's obligation to ensure that the Student was provided a FAPE extended to this class.

Without accommodations, the Student was unable to maintain a passing grade and ultimately dropped the course. While implementation of required accommodations is not a guarantee that a student will pass a course, a failure to provide approved accommodations denies students with disabilities their right under Section 504 to have their needs met as adequately as those of nondisabled students are met. For this reason, OCR finds that the District denied the Student a FAPE by failing to provide the XXXX XXX Instructor the information needed to ensure that the Student received the accommodations that had been found necessary for her.

Conclusion

For the reasons outlined above, OCR found the District out of compliance with Section 504 and Title II requirements with respect to the issue presented in this complaint.

To address the identified area of noncompliance, the District entered into the attached Resolution Agreement which is aligned with the complaint issues, the findings made, and the information obtained by OCR during its investigation. In addition to remedies individual to the Student, the District agreed to develop a procedure to ensure students with disabilities who take college classes on District campuses pursuant to an agreement with the College District are provided accommodations within their concurrent enrollment class as required under the applicable law. Notice of the procedure will be posted to the District and will be included with the standard paperwork for concurrent enrollment. The District also agreed to provide notice of students' accommodations to the College District and to confirm that these students are receiving the accommodations necessary to ensure provision of FAPE. Additionally, the District will create a guidance document for high school sites that have college classes that describes the process to ensure students with disabilities receive accommodations and modifications in postsecondary classes held on high school campuses pursuant to partnership agreements with the District. The District also agreed to provide training on the developed procedures to appropriate personnel.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying Complainant concurrently. When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Resolution Agreement until the District is in compliance with the statute(s) and regulations at issue in the case with respect to the issue investigated.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that neither the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Maria Asturias, Civil Rights Attorney, at (415) 486-5595.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader